

Engle Broadcasting

ORIGINAL

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February 1, 1995

William Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

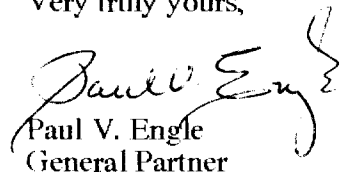
Dear Mr Caton:

Please accept this Petition for Reconsideration MM Docket 92-266 and MM Docket 93-215 (FCC 94-286). I have been instructed by the FCC's General Counsel's office to resubmit this Petition for Reconsideration which was originally filed on January 5, 1995.

This Petition was filed in a timely manner on the above date and is in the prescribed form for acceptance by the Commission. Proof of Performance by Federal Express is enclosed. Apparently, my Petition for Reconsideration was lost or misdirected at the Commission.

Thank you for allowing me to resubmit this Petition and for your attention in this matter.

Very truly yours,


Paul V. Engle
General Partner

c.c. Margo Doman Deputy Div. Chief Cable Services Branch

ENGLE BROADCASTING
WINSLOW PROFESSIONAL CENTER, RT. 73 & TANSBORO ROAD
WINSLOW TWP, NJ 08009
P.O. BOX 288, CEDAR BROOK, NJ 08018
(609) 767-8884 FAX: (609) 768-9084

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DATE: January 25, 1995

PAUL ENGLE
CHANNEL 8/S JERSEY TELEVISION
339 RT 73STE B
WINSLOW, NJ 08009
US

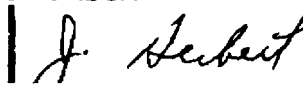
SUBJECT: PROOF OF PERFORMANCE

Dear PAUL ENGLE:

This is in response to your request for proof of delivery for package tracking number 3257789592. You will find the delivery information below.

Tracking No:	3257789592	Ship Date:	January 10, 1995
Shipper:	PAUL ENGLE CHANNEL 8/S JERSEY TEL 339 RT 73 BERLIN, NJ 08009 US	Recipient:	SECRETARY FEDERAL COMMUNICATIONS COMM 1919 M ST NW WASHINGTON, DC 20554 US

DELIVERY INFORMATION:

Signed For By: J.HERBERT


Delivered to: 1919 M ST FCC

Delivery Date: January 5, 1995

Delivery Time: 9:26 AM

Your business is greatly appreciated and we look forward to the opportunity of serving your future air express needs.

Sincerely,

Federal Express Corporation
Worldwide Customer Service
1-800-238-5355
Reference No: 0124021095

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)
Sixth Order on Reconsideration)
and Fifth Report and Order on)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)

MM Docket 92-266
MM Docket 93-215
FCC 94-286

TO: THE COMMISSION

JANUARY 3, 1995

PETITION FOR RECONSIDERATION

BY

ENGLE BROADCASTING

W08CC

ENGLE BROADCASTING W08CC submits this Petition for Reconsideration on the Sixth Order on Reconsideration and Fifth Report and Order in accordance with 47 CFR 1.429 to request the Commission include encouragement of cable operators to carry Low Power Television as part of this modification of its rules governing cable television. It is in the public interest , convenience and necessity that the Commission act on this Petition.

Engle Broadcasting owns and operates W08CC-TV Channel 8. W08CC is located in Winslow, NJ and is part of the Philadelphia ADI. W08CC signed on the air seven years ago, completed a major change five years ago, and just completed another major change implementing circular polarization. This enables W08CC to cover Southern New Jersey, a major portion of the Philadelphia ADI. W08CC is the largest LPTV station in the nation, in both signal area and population served. We have a strong commitment to serving the Southern New Jersey Community.

In the Sixth Order on Reconsideration and Fifth Report and Order, the Commission establishes procedures to enable cable operators to expand facilities and services. This Order encourages cable operators to add new programming services and new channels to attract new subscribers. This Order is the first set of rules that goes beyond the Cable Act. The Commission is acting on its own motion. This is the proper forum and timing for the Commission to act on a Congressional mandate set forth in the Cable Act to accommodate the LPTV service.

While the Cable Act specifies time frames for the Commission to establish rules and guidelines, there is a portion of the Cable Act that has not been addressed by the Commission, that is a mandate by Congress. The Act specifies that "cable operators should be encouraged to carry low power television stations licensed to the communities served by those systems where the low power station creates and broadcasts, as a substantial part of its programming day, local programming."¹ It was our assumption that the Commission would act on its own to carry out this Congressional mandate. It is the Commission's obligation to now correct this oversight.

¹ Cable Television Consumer Protection and Competition Act of 1992 Sec. 2 (21)

While the Cable Act does not grant must carry status to all LPTV stations (indeed only a small percentage qualify under the strict rules), Congress clearly intended for the Commission to establish a process whereby LPTV stations could gain access to cable subscribers. In the Cable Act, Congress found that without access to cable subscribers the economic viability of broadcast television will be jeopardized. Congress has made it clear that it favors the continuance of all television broadcast stations.² LPTV stations are television broadcast stations.³ Just as the Commission is establishing rules to expand the opportunities for cable programmers to reach viewers, so too, the Commission, under its Congressional mandate, must expand the opportunities for LPTV stations to reach cable viewers.

As written this Sixth Order not only excludes LPTV stations but actually discourages cable operators from carrying LPTV systems. The Order provides incentives for cable operators to add cable programming services to cable programming service tiers. By providing cable operators with a greater price increase for adding a cable program service than for adding a LPTV station, the Commission is granting preferential treatment to cable programming services, preferential treatment which actually hurts a Federally licensed service (LPTV stations). This is inconsistent with the Congressional mandate that the Commission "encourage cable operators to carry LPTV stations."

Additionally, cable systems have limited channel capacity, therefore the cable operator is likely to add a cable programming service in lieu of a LPTV station. The cable operator will derive greater income from the cable programming service under the current scheme.

² Cable Act of 1992 Sec. 2, p. 9, p. 10, p. 12

³ MM Docket 92-259 " LPTV stations are, in fact, television broadcast stations."

We ask that the Commission encourage cable operators to carry LPTV stations with similar incentives as set forth in this Sixth Order. The Commission should allow cable operators, who add a LPTV station to their basic tier, to raise the Operator's Cap of \$1.20 to \$1.40 and increase the number of channels they may add to seven. The License fee reserve may be increased from 30 cents to 35 cents. The Commission may require that the LPTV station broadcast local programming for a minimum of one hour during the hours of 6 pm to 12 midnight. Local programming is defined as that which originates at the station not a retransmission of a satellite signal.

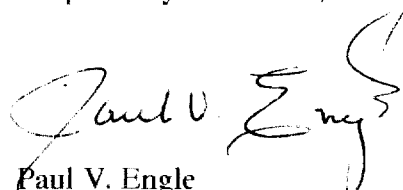
The cable system headend shall be within a 35 mile radius from the LPTV station's transmitter and shall deliver a signal level of -45 dBm at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality, or provide a baseband video signal.

By adopting this procedure, the Commission will carry out its Congressional mandate to "encourage cable operators to carry LPTV stations. This will provide much needed relief to LPTV stations. The LPTV industry in general has been very patient in its expectations of regulatory relief. The Senate version of the Cable Act granted must carry to LPTV stations. Those rules were changed to the current strict and very discriminatory regulations during the final minutes of the conference agreement to accommodate one holdout Congressman. Congress clearly intended for LPTV stations to be carried on cable systems. The Commission has a duty to provide an "encouragement" for cable operators. This methodology provides that encouragement by providing a financial

incentive to the cable operators. Cable subscribers will receive a local channel with local programming which they previously had not had access to. The addition of a LPTV station to a cable system will enhance its lineup and fill gaps in local programming of public interest. In areas of high cable penetration, the economically disadvantaged do not enjoy the diversity of programming that cable television offers. LPTV stations offer a community service to those individuals. It is important that those LPTV stations remain economically viable to continue serving that forgotten part of our community. The only way LPTV stations can be economically viable (as with any television station) is if they are permitted to reach all the viewers they are licensed to serve.

W08CC respectfully requests that the Commission includes this methodology in MM Docket 92-266 and 93-215, FCC 94-286 to encourage cable operators to carry LPTV stations. The methodology is consistent with Congressional intent and fulfills the Commission's obligation as specified in the Cable Act. Cable subscribers and the greater community will benefit from the increased viability of the LPTV service, the diversity and the local programming LPTV provides.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Paul V. Engle". The signature is fluid and cursive, with a large, stylized "E" at the end.

Paul V. Engle
Engle Broadcasting W08CC
P.O. Box 288
Cedar Brook, NJ 08018
(609) 767-8884
January 3, 1995